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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/654,508	09/03/2003	Geert Deroover	224105	4953
23460 7590 09/22/2008 LEYDIG VOIT & MAYER, LTD TWO PRUDENTIAL PLAZA, SUITE 4900 180 NORTH STETSON AVENUE CHICAGO, IL 60601-6731				
EXAMINER JOHNSON, CONNIE P				
ART UNIT		PAPER NUMBER		
1795				
MAIL DATE		DELIVERY MODE		
09/22/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/654,508

Applicant(s)

DEROOVER ET AL.

Examiner

CONNIE P. JOHNSON

Art Unit

1795

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Cynthia H Kelly/
Supervisory Patent Examiner, Art Unit 1795

Continuation of 11, does NOT place the application in condition for allowance because: Applicant argues that Munelly ('797) does not teach an infrared light absorbing compound with "three, four or five of the solubilizing groups as required." Applicant is directed to column 6, lines 50-67 wherein Munelly teaches an infrared absorbing dye with substituent groups R1a, R1b, R3a and R3b. Substituent groups R1a and R1b are independently an alkylsulfonate or alkylcarboxylate and R3a and R3b are COOR, OR or SR. The solubilizing groups are further defined in claim 10 of the present invention as comprising a carboxy group, a sulfo group, a hydroxy group or salts thereof. Munelly meets this limitation. Therefore, the substituent groups taught by Munelly meet the limitations of the solubilizing groups in the present invention and are anionic or become anionic in an aqueous alkaline solution having a pH of at least 9, absent any evidence to the contrary. Applicant argues that the NR2 group will not become anionic in an alkaline solution and is not a solubilizing group. The office action does not point to the NR2 group as a solubilizing group. The reference also teaches alkyl, COOR, OR and SR as substituent groups for R3a and R3b, which are solubilizing groups. Applicant argues that Muller ('040) does not teach that R1, R2 and R3 are solubilizing groups that are anionic or become anionic in an aqueous alkaline solution having a pH of at least 9. Further, that the most preferred embodiment in the reference is set forth at column 4, lines 49-58. Although Muller teaches preferable substituents, it would have been obvious to use the carboxyl, sulfo and hydroxyl groups as taught by Muller to form a symmetrical infrared absorbing dye (col. 4, lines 65-67, col. 5, lines 1-8 and col. 6, lines 1-8). Muller uses substituents other than those preferred to form the infrared absorbing dyes. Therefore, it would have been obvious to use the alkylsulfonate for R1 and COOR, OR and SR for R3. Further, although not claimed, NR2 also meets the limitations of a solubilizing group (applicant's specification, page 5, line 5).